

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Civil Action No.:05-11391-GAO

E. F., by next friend and parent, GINA  
FIGARATTO,

Plaintiffs,

V.

AMERICA WEST AIRLINES, INC.

Defendant.

JOINT PETITION FOR SETTLEMENT AND DISBURSEMENT PURSUANT TO  
MASSACHUSETTS GENERAL LAWS, CHAPTER 152, SECTION 15  
AND  
MASSACHUSETTS GENERAL LAWS, CHAPTER 231, SECTION 140C1/2

Now comes the Plaintiff, E.F. by next friend and parent Gina Figaratto (hereinafter referred to as “plaintiff”) and the Defendant, America West Airlines, Inc. who hereby petition this honorable court for approval of a minor settlement pursuant to Mass. General Laws, Chapter 231, Section 140C<sup>1/2</sup>.

**I. BRIEF STATEMENT OF THE CASE**

On February 12, 2004, E. F., the plaintiff, was flying as an “Unaccompanied Minor” on America West Flight 526 to visit with his father in Arizona. E.F. was five (5) years old and was accompanied by his sister who was five (5) years nine (9) months old.

The children’s mother, Gina Figaratto, had arranged for them to fly with America West and had paid an extra fee for their participation in their “Unaccompanied Minors Program.

During the flight E.F. needed to go to the bathroom. Plaintiff claims that with no one supervising him or otherwise attending to him, E.F. defecated in his pants. Thereafter, a passenger, with the knowledge of a flight attendant, cleaned E.F. up in the plane’s bathroom. E.F. was ultimately returned to his seat and turned over to his father upon their arrival in Phoenix.

Plaintiff claims that as a direct and proximate result of the events during this flight, E.F. suffered severe post-traumatic stress.

## **II. MEDICAL**

Following E.F.'s return home, he had distinctive personality changes. Most notably, he was aggressive and defiant. E.F. was taken to a psychotherapist, Nancy J. Sanborn, LMHC of the Plymouth Counseling Center, on March 11, 2004 and has continued in the care of the Plymouth Counseling center since that time. E.F.'s symptoms continue through the present, though they are now less during non-travel time periods.

## **III. MEDICAL EXPENSES**

E.F.'s medical treatment (covered by Health Insurance) has averaged two thousand dollars (\$2,000.00) annually.

## **IV. RELEVANT PROCEDURAL HISTORY**

This action was initiated by the filing of a Complaint in the Massachusetts Superior Court, County of Plymouth and was removed to the U.S. District Court for the District of Massachusetts by Notice of Removal to the United States District Court pursuant to 28 U.S.C. § 1441 (A) filed by the Defendant on July 1, 2005.

After limited discovery, the parties agreed to mediate the dispute. As a result of those efforts, the parties have agreed to resolve all claims for twenty five thousand dollars (\$25,000.00). The settlement proceeds are to be distributed and allocated as set forth below.

## **V. ALLOCATION OF THE SETTLEMENT**

In consideration of the Settlement Agreement executed by the parties, attached as Exhibit A, the parties agree to settle the instant action for twenty five thousand dollars (\$25,000.00). That amount is to be distributed as follows:

- A. Pursuant to a written retainer agreement, Stopa & Associates, LLC shall receive eight thousand three hundred thirty three dollars (\$8,333.33) as a legal fee.
- B. Pursuant to a written retainer agreement, Stopa & Associates, LLC shall be reimbursed for expenses in the amount of \$851.00 [Deposition Transcripts - \$401.00 and Mediation Fee \$450.00].

C. The balance of the proceeds, fifteen thousand eight hundred fifteen and 67/100 dollars (\$15,815.67) shall be invested in a structured settlement providing for guaranteed tax-free payments to E.F. as follows: \$5,000.00 at age 18; \$10,000.00 at age 21; and, \$15,000.00 at age 25.

## **VI. Conclusion**

Wherefore, it is respectfully requested that this Honorable Court allow and approve the Joint Settlement Petition, with the allocation of settlement funds as set forth above, in accordance with M.G.L., Chap. 231, § 140C ½.

Respectfully Submitted,  
E.F. by next friend G.F.  
By his Attorney,

/s Mark T. Stopa, Esq.  
Mark T. Stopa, BBO#560264  
STOPA & ASSOCIATES, LLC  
36 Mechanic St., Suite 208  
Foxboro, MA 02035  
508-543-0600

America West Airlines, Inc.  
By its Attorneys,

/s Carey Bertrand, Esq.  
Maynard M. Kirpalani, BBO# 273940  
Carey Bertrand BBO# 650496  
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
155 Federal Street  
Boston, Massachusetts 02110  
617-422-5300

CERTIFICATE OF SERVICE

I, Mark T. Stopa, hereby certify that I have this day served a copy of the foregoing motion on the defendant by filing a copy with the ECF system.

/s Mark T. Stopa, Esq.  
Mark T. Stopa

Date: January 23, 2007